

13 Q. And why is that?

64. PAGE 234:14 TO 235:12 (RUNNING 00:01:27.300)

14 A. I guess, in my belief that we are -- we
 15 were not to equalize -- or in my belief of making
 16 pricing decisions that did not equalize a dealer to
 17 McNeilus, I saw no benefit in a dealer knowing where
 18 that pricing was.

19 Q. Do you consider that information to be
 20 competitively sensitive to Mack?

21 A. Yes.

22 Q. And is that one of the reasons you don't
 23 want the dealers to have it?

24 A. I think my belief is there have been many
 00235:01 instances where we did not equalize a dealer to
 02 McNeilus where the comment says, I am competing with
 03 McNeilus and the dealer did get the deal. And
 04 therefore, it is my opinion in the best financial
 05 interest of the company that necessarily giving the
 06 McNeilus price to the dealer was not warranted.

07 Q. My question to you is whether you
 08 considered it to be competitively sensitive?

09 A. Yes.

10 Q. And is that one of the reasons why you
 11 didn't want the dealers to have it?

12 A. Yes.

65. PAGE 235:13 TO 236:13 (RUNNING 00:00:52.300)

13 Q. Can you identify those transactions for
 14 me, sir, when the dealers told you they were
 15 competing against McNeilus, you didn't give the
 16 discount that you gave to McNeilus and the deal went
 17 through?

18 MR. HEEP: I am sorry. That was
 19 a lot. There was a lot to that question.
 20 Can you just do it again.

21 - - -
 22 (Whereupon, the preceding portion of
 23 testimony was read back by the court
 24 reporter as follows:

00236:01 00236:01 "Q. Can you identify those
 02 transactions for me, sir, when the dealers
 03 told you they were competing against
 04 McNeilus, you didn't give the discount
 05 that you gave to McNeilus and the deal
 06 went through?"

07 MR. HEEP: The deal went through
 08 for who?
 09 - - -

10 BY MR. MACK:

11 Q. For the dealer?

12 A. I do not have specific examples with me
 13 now, but I would be able to provide them.

66. PAGE 237:19 TO 245:12 (RUNNING 00:10:17.100)

19 Q. Now, let's look at Exhibit-25?

20 A. Okay.

21 Q. February 12th and 11th of 2001, right?

22 A. Correct.

23 Q. And this is an email between you and Mr.
 24 Favia, right?

00238:01 A. Yes. I am sorry. I'm reading.
 02 Q. You are welcome to do that. I want to ask
 03 you about the middle email, the one that you sent to
 04 Joe Favia on February 11 at 12:04. Are you with me?
 05 A. Yes.
 06 Q. This concern McNeilus pricing for 2002,
 07 right?
 08 A. Yes.
 09 Q. And asked Joe, are there any rebates/
 10 bonuses outstanding with them or are we square?
 11 A. Correct.
 12 Q. What were you referring to there, sir?
 13 A. That was referring to situations I
 14 thought -- I think we addressed earlier where -- or
 15 maybe we did not address. Where we had some rebate
 16 programs available to the dealer on vocational
 17 trucks. And McNeilus complained about them and said
 18 that made them uncompetitive.
 19 Q. Right?
 20 A. And we came to some agreement to keep
 21 McNeilus happy, financial agreement to keep McNeilus
 22 happy.
 23 Q. You also used the word bonuses?
 24 A. I believe -- again, I am not a hundred
 00239:01 percent sure. But I do believe there may have --
 02 there may have -- maybe there was some volume
 03 quantity. I just don't know exactly.
 04 Q. Do you recall, sir, Mack contributing
 05 money to McNeilus for advertising?
 06 A. I don't remember. It's possible. I
 07 may -- I just don't remember.
 08 Q. Do you recall Mack -- other than this
 09 instance you told us about with the rebate on the
 10 program offered to the dealers, do you recall any
 11 other rebates, bonuses, payments of any form that
 12 were made by Mack to McNeilus?
 13 A. In what timeframe?
 14 Q. During your years from 1998 to the
 15 present?
 16 A. In addition to this period where I believe
 17 we made some settlement when we ran a rebate program
 18 for the dealers, I am aware that we do have in place
 19 now with their deferred payment terms the 120 days
 20 that we keep a basically a running tally of all
 21 those trucks, for lack of a better description, a
 22 plus/minus account kept on them.
 23 Q. Okay. Anything else?
 24 A. I am not aware of anything else.
 00240:01 Q. Do you know what an Eaton rebate is?
 02 E-A-T-O-N?
 03 A. I'm guessing that would be a vendor
 04 rebate.
 05 Q. Do you know anything about Mack paying a
 06 rebate to Ryder in connection with the Eaton
 07 product?
 08 A. I am aware of their pricing includes the
 09 assumption that either -- I don't remember if we
 10 collected or if Eaton paid it direct to Ryder.
 11 Q. And that is a rebate that Mack would
 12 otherwise be entitled to from Eaton if it did agree
 13 to pay it to Ryder?
 14 MR. HEEP: Objection to form.

15 And confusing question.
16 - - -

17 BY MR. MACK:

18 Q. Is that a rebate from Eaton for including
19 Eaton's product in the Mack Trucks sold to Ryder?

20 A. It is definitely related to that, yes.

21 Q. And Mack made a decision, did they not, to
22 give that rebate to Ryder?

23 MR. HEEP: Objection to
24 foundation.

00241:01 THE WITNESS: I believe we have,
02 yes.
03 - - -

04 BY MR. MACK:

05 Q. Now, are there other product rebates that
06 you are aware of that have been given to national
07 account?

08 A. I'm sure there are. I just can't tell you
09 anything specific.

10 Q. How about a meritor rebate. Do you know
11 anything about that?

12 A. That really doesn't -- that is more
13 negotiated by the salesmen and usually our marketing
14 arm. They go hand and hand to work with this
15 customer.

16 Q. When you look at the issue of whether or
17 not to equalize a Mack dealer with a national
18 account pricing, do you consider those rebates?

19 MR. HEEP: Objection to
20 foundation and mischaracterizing his
21 former testimony.
22 - - -

23 BY MR. MACK:

24 Q. Okay. You can answer.

00242:01 MR. HEEP: Can you read it back.
02 - - -

03 (Whereupon, the preceding portion of
04 testimony was read back by the court
05 reporter as follows:

06 "Q. When you look at the issue of
07 whether or not to equalize a Mack dealer
08 with a national account pricing, do you
09 consider those rebates?"

10 - - -
11 THE WITNESS: I will answer no.
12 - - -

13 BY MR. MACK:

14 Q. Okay. Back to Exhibit-25. You say, I
15 would suggest we try and hold pricing at least flat
16 with some veiled promise we will help them out more
17 on specific deals, particularly when they are not
18 competing against our dealers. I think they
19 realized we have come to the table with special
20 deals programs in the past?

21 A. Correct.

22 Q. When you talked about helping McNeilus out
23 on specific deals, what were you referring to?

24 A. I was referring to deals where McNeilus
00243:01 would be going in with a Mack product and try and
02 compete with an account that bought something other
03 than Mack.

04 Q. Is that extra sales assistance that's

05 available to McNeilus?

06 A. I would say if there was a special deal
07 and we -- and Joe Favia definitely knew and the
08 request came from McNeilus, we will try and take a
09 Kenworth account out and put Mack's in, yes.

10 Q. Has that been done?

11 A. I believe it has been done, yes.

12 Q. And when -- strike that.

13 When you look at taking the
14 Kenworth account out, are you aware of the pricing
15 that Kenworth is using on that account?

16 A. Am I aware? No, I am not.

17 Q. Does Joe provide you with any information
18 regarding what that pricing is?

19 A. Joe makes a recommendation in his sales
20 assistance request where he thinks the sales
21 assistance would need to be for us to possibly be
22 able to win that deal.

23 Q. Is it a recommendation to meet the pricing
24 of Kenworth or to beat the pricing of Kenworth?

00244:01 A. I cannot answer. He does not tell me if
02 it's to meet or beat.

03 Q. But it is a recommendation, as you
04 understand, it to win the account?

05 A. Correct.

06 MR. HEEP: Belated objection to
07 form.

08 - - -

09 BY MR. MACK:

10 Q. Now, you said here that you Joe should
11 make some veiled promises to help them out more on
12 specific deals, particularly when they are not
13 competing against our dealers.

14 What did you mean there when you
15 said when they are not competing against our
16 dealers?

17 A. When they are -- I believe I'm referring
18 here to when they are competing against accounts
19 that have previously purchased somebody other than
20 Mack Truck.

21 Q. Is it fair to say, sir, that in
22 February 11, 2001, when you wrote this email to Mr.
23 Favia you recognized that there were situations when
24 McNeilus did compete against the dealers?

00245:01 MR. HEEP: Objection to form.

02 THE WITNESS: I believe there
03 are some situations.

04 - - -

05 BY MR. MACK:

06 Q. And then you said, I think they realize we
07 have come to the table with special deals programs
08 in the past. What special deals or programs are you
09 referring to?

10 A. I would have been referring to additional
11 sales assistance over and above the current or the
12 known net net pricing.

67. PAGE 246:01 TO 246:15 (RUNNING 00:01:01.500)

00246:01 Q. Mr. Polzer, Exhibit-26, is this a memo
02 that you sent to regional vice presidents and
03 district managers on January 21, 200?

04 A. Correct.
05 Q. And this concerned a number of Mack sales
06 programs; is that right?
07 A. Yes. Among other things.
08 Q. Okay. I wanted to ask you about the
09 sentence, Centennial Sweep Incentive Program?
10 A. Okay. Okay.
11 Q. Under the sentence Centennial Sweep
12 Incentive Program I see, this is a customer rebate
13 program only. What does that mean?
14 A. That means we were only going to pay the
15 rebate to the customer, not to the dealer.

68. PAGE 248:04 TO 250:10 (RUNNING 00:02:21.100)

04 Q. Exhibit-27 is a document we marked in Mr.
05 Favia's deposition. The last two pages appear to be
06 a letter that you were cc'd on?
07 A. Yes.
08 Q. And do you recall, sir, that McClain was
09 permitted to participate in the Centennial Sweep
10 Program?
11 A. Yes.
12 Q. Was McNeilus also permitted to
13 participate?
14 A. I think, as I had stated earlier, I do
15 believe that there was a complaint from our national
16 account Body Builders that when this program came
17 out that they felt they had been disadvantaged. And
18 we did go back and make some financial settlement
19 with them.
20 Q. So the national account Body Builders were
21 permitted to participate in the Centennial Sweep
22 Program?
23 A. I believe there were some financial
24 payments made to the Body Builders.

00249:01 Q. Well, doesn't Mr. Favia's letter indicate
02 that McClain was going to participate in the current
03 Centennial Sweep Incentive Program?

04 A. Yes, it does.
05 Q. And McClain was permitted to participate
06 in the program. Who got the rebates?

07 MR. MACK: Objection to
08 foundation.

09 THE WITNESS: I don't know
10 100 percent. I am going to guess it was
11 McClain.
12 - - -

13 BY MR. MACK:

14 Q. You know that a check was cut to McClain,
15 don't you?

16 MR. HEEP: I am objection to
17 foundation. And you are not supposed to
18 guess. But if you do know the answer,
19 please give it to him.

20 THE WITNESS: I don't know
21 100 percent. My recollection back at that
22 time was I believe we did cut a check to
23 McClain.
24 - - -

00250:01 BY MR. MACK:

02 Q. Now, why were -- if a dealer sold to a

03 body company, the dealer wasn't eligible to
 04 participate in the Centennial Sweep Program. But if
 05 Mack sold to a body company like McClain or McNeilus
 06 the Centennial Sweep Program applied. Why was that?

07 MR. HEEP: Objection to
 08 foundation.

09 THE WITNESS: I believe that was
 10 a decision that was made to allow happen.

69. PAGE 250:22 TO 255:03 (RUNNING 00:04:52.300)

22 Q. Mr. Polzer, Exhibit-28 is a sales
 23 assistance request for Chicago Mack dated April 3rd,
 24 2000, right?

00251:01 A. Correct.

02 Q. And your comments at the bottom of this
 03 sales assistance request reference, an agreement
 04 that I don't agree with, right?

05 A. Correct.

06 Q. What agreement were you referring to
 07 there?

08 A. I believe that agreement was that in
 09 return for the Shelby Howard group which would be
 10 Chicago and/or Central Indiana Mack to order large
 11 stock, some quantity of factory or stock trucks, as
 12 we would say, we agreed to some following
 13 conditions.

14 I believe there was agreement to
 15 discounting on those trucks they ordered. And I do
 16 believe there was an agreement to help move the
 17 existing inventory that he already had. Because he
 18 was going to be getting all these trucks that he had
 19 put on order.

20 Q. Did you approve that agreement?

21 A. Personally, no, I did not.

22 Q. And you didn't agree with that agreement,
 23 did you?

24 A. My personal opinion was no, I did not like
 00252:01 that agreement.

02 Q. And why didn't you like that agreement?
 03 A. I thought the sales assistance that had
 04 been promised to him on the old inventory was a
 05 little excessive.

06 Q. And do you know who entered into that
 07 agreement for Mack?

08 A. I believe it would have been obviously
 09 Jeff Yellis in agreement with -- and I don't know if
 10 Kevin Flaherty was our -- I don't know the timing of
 11 when he was senior vice president of sales, or Paul.
 12 But I am sure it would have been done at the
 13 regional vice president level with his boss'
 14 acknowledgement.

15 Q. Is it fair to say, Mr. Polzer, that there
 16 were a number of these pricing agreements with
 17 Chicago Mack in 2000 and 2001 that you did not
 18 personally agree with?

19 MR. HEEP: Objection to form.

20 THE WITNESS: I don't know if a
 21 number would be a fair assessment.

22 - - -

23 BY MR. MACK:

24 Q. Well, is there any other than this one on

00253:01 April 3rd of 2000 that you didn't agree with?
02 A. I'm sure there were probably some others.
03 Q. Was this pricing that was part of this
04 agreement to Chicago Mack offered to the chain as a
05 whole?

06 MR. HEEP: Offered to the chain
07 as a whole?
08 MR. MACK: Yes, sir.
09 - - -

10 BY MR. MACK:

11 Q. The Mack chain?
12 A. You mean the entire dealer network?
13 Q. Yes. That is what I call a chain.
14 A. Judging by the date when this was coming
15 down, my recollection is the RVPs were requested to
16 go out to dealer, and I am not saying they would
17 have went to all dealers. But I am sure they would
18 have went to their bigger dealers to get factory
19 orders in the house.

20 And then from that there would
21 have been, I am sure, not with any specific to offer
22 this, this, this or this. It would see if you can
23 get some factory orders and we will -- we will look
24 at any deal. You know, we will look at the deals as
00254:01 they are presented.

02 Q. Are you aware, sir, of any dealer other
03 than Chicago Mack or Central Indi Mack that receives
04 special pricing as a result of that effort to move
05 company inventory?

06 MR. HEEP: Objection. Vague.
07 And specifically the term special pricing.
08 - - -

09 BY MR. MACK:

10 Q. You can answer.
11 A. I believe something simple -- I am not
12 aware was anybody else other than Chicago or Central
13 Indi.

14 Q. You are aware, are you not, that a number
15 of dealers were offered free floorplan to move
16 company inventory?

17 MR. HEEP: Objection. Vague as
18 to time.

19 THE WITNESS: That came later in
20 the time line, correct.
21 - - -

22 BY MR. MACK:

23 Q. But, as you sit here today, you don't
24 recall any special pricing matrixes for any dealers
00255:01 other than Central Indi Mack and Chicago Mack; is
02 that right?

03 A. That is correct.

70. PAGE 256:19 TO 259:17 (RUNNING 00:03:34.300)

19 Q. Now, do you wish to expand on something?
20 A. I -- I guess I was going to explain how
21 that came about or how that came about in connection
22 with the corporate inventory part.

23 Q. Okay. What do you want to explain?
24 A. When we built as a corporation roughly
00257:01 1500 corporate inventory trucks in that timeframe of
02 March to about June of 2000, maybe April, and by

03 that I mean they were -- they were specs of trucks
04 that we came up with. We had no dealer in mind. I
05 shouldn't say it that way. There was no specific
06 dealer that we knew they would be going to, no
07 customer in mind.

08 But we came up with what we
09 thought were pretty popular type specs. And roughly
10 there were about anywhere from a thousand to 1500
11 trucks built. And we were under pressure to get
12 those invoiced to dealers. So we went to the
13 dealers and we asked if they would let -- would they
14 be willing to take these trucks? All dealers were
15 given that opportunity to buy our corporate
16 inventory.

17 Q. Were all --

18 A. Excuse me.

19 Q. Sorry. Please finish.

20 A. Initially, only a few trucks were sold to
21 dealers. So to entice them to get more of those
22 corporate inventory units invoiced or for dealers
23 willing to take them, we had to come up with some
24 other type of program to entice the dealers to take
00258:01 corporate inventory trucks.

02 And that is where with developed
03 the two-for-one program, which I am sure you have
04 been made aware of. And that is said for every
05 corporate inventory truck you could -- you will let
06 us invoice you, you have basically a right to order
07 two trucks in the future at which we will allow you
08 to bill them. We will pick up the free floorplan
09 inventory or pick up the floorplan.

10 Now, what certain dealers did --
11 what certain dealers did was instead of saying yes,
12 I will take some corporate inventory but I really
13 don't need future production orders. We did allow
14 on a deal by deal basis then to go backwards and
15 take existing corporate inventory and we would pick
16 up the free floorplan in lieu.

17 Q. That was something that was done on a deal
18 by deal basis but not offered to the chain as a
19 whole?

20 MR. HEEP: Objection to form.

21 THE WITNESS: I disagree. I
22 believe it was offered to the dealers in
23 whole.

24 - - -

00259:01 BY MR. MACK:

02 Q. The dealers as a whole were advised that
03 they -- if they wanted they could have free
04 floorplan on existing units in their inventory as
05 part of this two-for-one program; is that what your
06 testimony is, sir?

07 A. It was my understanding the DMs, the RVPs
08 have told the DMs to go canvas your dealers and
09 explain what we were willing to do.

10 Now, did they specifically say
11 we will go back and look at? That, I will not
12 attest to.

13 Q. Well that's what I was asking.

14 A. Okay.

15 Q. And you don't know?

16 A. I do not know if it was universally

17 communicated.

71. PAGE 260:16 TO 268:01 (RUNNING 00:07:59.100)

16 Q. Do you recognize this, sir?

17 A. Yes, I do.

18 Q. Now, at the top there is some handwriting
19 to someone Jack. Is that your writing?

20 A. That is my writing.

21 Q. Who is Jack?

22 A. Jack Haggarty is our manager of sales
23 billing.

24 Q. And you wrote more GSOs that should say
00261:01 MLSII as COE name and get 17 and a half percent
02 total assistance as per letter?

03 A. Correct.

04 Q. MLSII, is that leasing?

05 A. MLSII stands for leasing. Yes, the Mack
06 leasing system, correct.

07 Q. And what letter were you referring
08 thereto?

09 A. That would be the letter --

10 Q. This letter?

11 A. I'm sorry. Now, I believe the use of the
12 term letter in my handwritten note refers to either
13 an email or a letter that outlined these additional
14 orders we just discussed that we were willing to
15 take or we were -- we -- we made the deal with
16 Central Indiana Mack and/or Chicago Mack. And part
17 of that agreement was the Macungie type trucks would
18 have a net billed discount of 17 and a half percent.

19 Q. Now, MLSII is a pricing matrix, right?

20 A. No. I believe here MLSII was just a
21 little name that Jack McCafferty instructed the
22 dealer to use so we would easily identify that these
23 were part of that ordering arrangement.

24 Q. These trucks weren't being ordered for
00262:01 leasing, were they?

02 A. No.

03 Q. But MLSII is a leasing program, isn't it?
04 MR. HEEP: Objection. Asked and
05 answered.

06 THE WITNESS: Yes. I -- yes.
07 MLSII is leasing. But it could have
08 said -- as far as I'm concerned, it could
09 have said any particular letters or codes
10 that would allow us to identify that these
11 were part of that arrangement.

12 - - -

13 BY MR. MACK:

14 Q. What does COE mean?

15 A. Customer order entry. That is -- that is
16 a mainframe system that would let us look at what
17 name the dealer put on the order when he submitted
18 it.

19 Q. And the letter to you says these are the
20 GSO numbers that should have been net billed to us
21 at higher numbers. By higher numbers does he mean a
22 higher discount?

23 A. Yes.

24 Q. Okay. He was saying we were billed too
00263:01 much for these, please reissue some invoices?

02 A. Excuse me. Repeat that.
03 Q. Was he saying that we were billed too much
04 for these, we are entitled to a higher discount,
05 please reissue the invoices?

06 MR. HEEP: Objection as to form
07 and foundation.

08 THE WITNESS: This was not
09 dealing with free invoicing.
10 - - -

11 BY MR. MACK:

12 Q. Okay. Was he dealing with net billing?
13 A. This was dealing with -- these GSOs were
14 obviously not invoiced at the net billed 17 and a
15 half discount that the agreement said we would
16 honor.

17 Q. So what did you do to make an adjustment?
18 A. We had --

19 MR. HEEP: Objection to
20 foundation.
21 - - -

22 BY MR. MACK:

23 Q. It says please make the necessary
24 adjustments. Did you make an adjustment?

00264:01 A. I'm sure we did.
02 Q. Okay. And did you change the COE name to
03 MLSII?

04 A. I don't believe we would have concerned
05 ourselves with changing the COE name.

06 Q. Well, that's what you wrote there, Mr.
07 Polzer. It's your writing, right? Please, it
08 should say MLSII is COE name?

09 MR. HEEP: Objection to form and
10 asked and answered.

11 THE WITNESS: What my note says
12 is if these were trucks that were part of
13 the agreement we made, they probably
14 should have came in with this designation
15 so it would have been easier for sales
16 billing to recognize that they were these
17 truck.

18 For whatever reason maybe they
19 forgot to put that name on, so this is in
20 reaction to -- or this is Central Indi
21 saying, hey, these trucks were part of the
22 agreement, inferring maybe we forgot to
23 use the code name that Jack -- excuse
24 me -- that John McCafferty said we would
00265:01 identify those trucks as. But these
02 trucks should be part of the treatment.
03 - - -

04 BY MR. MACK:

05 Q. Wasn't the code name that Mr. McCafferty
06 gave you also the name for the Mack leasing pricing
07 matrix?

08 MR. HEEP: Objection. Asked and
09 answered twice, at least.

10 MR. MACK: Well, he hasn't. He
11 is moving all over the place.

12 THE WITNESS: It very well could
13 have been. I don't remember what the MLS
14 matrix for a Macungie truck was. We
15 didn't do many of those.

16 - - -
17 BY MR. MACK:
18 Q. Wasn't the pricing on the MLS matrix, did
19 it have higher discounts than the regular matrix?
20 A. Can you repeat that?
21 Q. Did the MLS pricing matrix have higher
22 discounts than the regular pricing matrix?
23 MR. HEEP: What do you mean by
24 the regular pricing?

00266:01 - - -
02 BY MR. MACK:
03 Q. Standard pricing matrix?
04 A. If I understand your question correctly,
05 the discounts with our Mack leasing system program
06 were generally higher than a retail.
07 Q. Now, putting this document aside. Is a
08 Mack dealer entitled to those Mack leasing discounts
09 if the truck is not going to be leased?
10 A. No, they should not be.
11 Q. Did you ever talk with Mr. McCafferty as
12 to why he was going to use the code name MLSII for
13 these units with these increased levels of sales
14 assistance?
15 A. No, never.
16 Q. And is that the code name that was used
17 for all of the units that came through with this
18 pricing?

19 MR. HEEP: Objection. Vague.
20 THE WITNESS: My understanding
21 we were going to use -- the dealer was
22 going to use the name MLSII to identify
23 the trucks that were part of the agreement
24 that we made back in February on the
ordered -- to be ordered units.

00267:01 - - -
02 - - -
03 BY MR. MACK:
04 Q. What is normally filled in the CEO field?
05 A. For customer name?
06 Q. Um-hmm. Is that what the CEO name is
07 usually for, customer name?
08 A. Yes. If it is for -- traditionally
09 dealers, if it is for a known customer, they will
10 put that customer's name in there. If they are just
11 ordering trucks for stock purposes, as we discussed
12 earlier, meaning they don't know who the customer
13 is, but hopefully somebody will come eventually and
14 buy them, they will use the term stock or they will
15 usually put in an identifying spec so they know what
16 is it. It really varies.

17 Q. What if they are going to buy them for
18 their leasing fleet, what do they put in?
19 A. They would -- it could be anything I just
20 mentioned there. Or they might be putting in the
21 name, as an example, Chicago Mack Leasing.
22 Q. Now, once you saw MLSII on these GSOs, you
23 knew then that who the units were that received this
24 special pricing; is that right?

00268:01 A. Correct.

72. PAGE 268:12 TO 268:19 (RUNNING 00:00:26.100)

12 Q. And how long did that arrangement stay in

13 place?
 14 A. It is my understanding he had put the
 15 order in for the trucks that were part of that
 16 agreement within the next couple weeks. I don't
 17 know the exact timeframe he was given to put orders
 18 in. But then it became a product of when we could
 19 bill them.

73. PAGE 269:01 TO 277:05 (RUNNING 00:09:44.600)

00269:01 Q. Is Exhibit-30 an email that Mr. McCafferty
 02 sent to you in May of 2000?

03 A. Correct.

04 Q. And is that your writing at the top,
 05 another note to Jack?

06 A. Correct.

07 Q. And again you say use MLSII as customer
 08 name, right?

09 A. I used the term using which means that
 10 hopefully that is what was on there. That was a COE
 11 name that was used.

12 Q. You were telling Jack when you see an
 13 order come in from these dealer for Macungie units
 14 with as MLSII as the customer name, they are
 15 entitled to the discounts indicated in this email,
 16 correct?

17 A. Correct.

18 Q. And according to this email the deal
 19 involved Indi, R&H, Chicago, right?

20 A. Correct.

21 Q. And Central Tennessee was included on the
 22 CX portion of the deal but not on the Macungie
 23 portion, right?

24 A. Correct.

00270:01 Q. Were the CX units that received the
 02 discount indicated here also to have MLSII as the
 03 customer name?

04 A. I believe if I read the memo, it was only
 05 the Macungie units that he was going to use the term
 06 MLSII.

07 Q. Okay. How if he was ordering some CX
 08 units and wanted the discounts indicated in this
 09 document, how was he going to notify you of that?

10 MR. MACK: How was he going to
 11 fill the customer field in?
 12 - - -

13 BY MR. MACK:

14 Q. Sure. That is a better question.

15 A. I do not remember.

16 Q. Okay. But regardless, you remember these
 17 discounts?

18 A. Yes.

19 Q. Were these also deep discounts?

20 MR. MACK: Objection to the
 21 vagueness. Form.

22 THE WITNESS: Any in particular
 23 or across the board?
 24 - - -

00271:01 BY MR. MACK:

02 Q. Well, I am looking at 24 percent on CX613,
 03 the 1999 models?

04 A. Well, it was 24 percent. They were two

05 year old outdated models. It very well could have
06 been what the street price it took to sell a two
07 year old model.

08 Q. Well, did you consider any of the
09 discounts in this email to be excessive?

10 MR. HEEP: Objection. Vague.
11 Form.

12 THE WITNESS: Obviously it must
13 have because there was a previous exhibit
14 that said I did not agree.
15 - - -

16 BY MR. MACK:

17 Q. What I am asking you is whether as of May
18 the 15, 2000 you still didn't agree with any or all
19 of these discounts?

20 A. Excuse me. Repeat that.

21 Q. As of May 15 of 2000, did you still not
22 agree with any or all of these discounts?

23 A. I mean, I may have a person I dislike for
24 them. But if you are asking for my personal
00272:01 opinion, which is what it would be, they possibly
02 were a little high.

03 Q. Were they higher than the discounts that
04 were being given to other dealers as part of the
05 sales assistance process?

06 A. Probably.

07 Q. And these discounts were in excess of the
08 level of authority of the regional vice president?

09 A. Yes, they would have been.

10 Q. And they were also in excess of the level
11 of authority that you had, right?

12 A. At that time, probably not.

13 Q. Okay. Did you -- do you recall equalizing
14 any dealers with these discounts being given to
15 these three dealers or four dealers?

16 A. I do not recall any specific instances.
17 But if these trucks would have been used outside of
18 the AOR to compete with another dealer and they
19 would have notified me with that. If they would
20 have liked to have been equalized, we would have
21 done that.

22 Q. Well, was it your understanding that the
23 dealers that purchased these trucks were not
24 permitted to sell them outside of their AOR?

00273:01 A. That was my understanding.

02 Q. Now, these dealers are asking for net
03 billing, right?

04 A. Correct.

05 Q. Now, when they use the term -- or when the
06 term net billing is used there do you understand
07 that to mean including the volume bonus?

08 A. No, not the volume bonus in these.

09 Q. Was there billing to these dealers that
10 included the volume bonus?

11 A. I don't remember. I -- I don't believe we
12 were giving them the volume bonus also. But I can't
13 be a hundred percent sure. I would have to look.

14 Q. Now, Mr. McCafferty says on the second
15 page of the email, I have not talked to Stephen
16 Polzer concerning how he would like these units
17 ordered. I would prefer MLSII. This covers a lot
18 of ground.

19 Now, do you see that?
20 A. Yes. Actually, I must have misread this.
21 Like I said, I was trying to go back on my memory.
22 I didn't realize there was a period after the word
23 ground. I thought that was an entire sense that
24 said, I would prefer MLSII this covers a lot of
00274:01 ground concerning the Macungie product.

02 It's very possible he used MLSII
03 for all the models.

04 Q. Do you know what he meant when he said
05 MLSII covers a lot of ground?

06 A. No, I do not.

07 Q. Okay. Now, Mr. McCafferty says,
08 concerning the Macungie product, group requested
09 something in righting. Told them it was not going
10 to happen. Did you see that when you got this
11 email?

12 A. Yes, I did see it.

13 Q. Okay. Did you think that was unusual?

14 A. I thought it was unnecessary.

15 Q. Why did you think it was unnecessary?

16 A. Unnecessary to make that comment. Excuse
17 me.

18 Q. Well, did you think about why Mr.
19 McCafferty would find it necessary to say it was not
20 going to happen?

21 A. To be honest, I just thought that was John
22 being John.

23 Q. Well, as you read it here, today, does it
24 sound suspicious to you?

00275:01 MR. HEEP: Objection to form.

02 Vague.

03 THE WITNESS: To be honest, it
04 looks more suspicious than the entire
05 arrangement does to me.

06 - - -

07 BY MR. MACK:

08 Q. Well, don't we have a situation here where
09 Mr. McCafferty is using a fictitious customer name,
10 MLSII, and saying parts of this deal is not going to
11 be put in writing?

12 MR. HEEP: Objection to form.
13 It's leading and it mischaracterizes what
14 he already described what he understood an
15 MLSII to be used as.

16 THE WITNESS: I just disagree to
17 the term MLSII as a fictitious name. It
18 could have been dealers used a wide
19 variety of names when they are ordering
20 stock units. There is no set pattern of
21 what they should put in there. To me that
22 is like an irrelevant field, I mean.

23 - - -

24 BY MR. MACK:

00276:01 Q. Was there a customer ordering these trucks
02 by the name of MLSII, sir?

03 MR. HEEP: Objection. Haven't
04 we asked answered multiple times what was
05 intended by MLSII, what he understood
06 MLSII to be, and everything about MLSII?

07 MR. MACK: Mr. Heep, we have a
08 memo where the man says this covers a lot

09 of ground. I think I am entitled to
10 follow-up and see whether that refreshes
11 his recollection as to what that means.
12 That is what I am trying to do.

13 MR. HEEP: Are you asking him
14 then if --

15 - - -
16 BY MR. MACK:

17 Q. Can you answer my question, sir?
18 MR. HEEP: Well I don't think he
19 testified that he forgot what it meant. I
20 don't what know what recollection needs to
21 be refreshed.

22 - - -

23 BY MR. MACK:

24 Q. You circled I would prefer MLSII, right?

00277:01 MR. HEEP: Objection to form.
02 THE WITNESS: I believe I
03 circled that for Jack Haggerty so he knew
04 what to look for when those orders came
05 in.

74. PAGE 278:05 TO 279:01 (RUNNING 00:01:01.600)

05 Q. Was it the code name, sir?

06 A. It was not a, quote, code name. It was a
07 way to identify units that we agreed to the stock
08 order. We needed a way to identify these units.

09 Q. Well, why didn't you just say Central Indi
10 Mack and Chicago Mack? Because those were the
11 customers that were buying the trucks, right?

12 MR. HEEP: Objection to
13 foundation and form.

14 THE WITNESS: Is that a
15 question?

16 MR. HEEP: Yes. The question is
17 still on the table. If you want it read
18 back, I am sure the court reporter would
19 be happy to do it.

20 THE WITNESS: The dealer code
21 and the dealer name would be on any
22 invoice. It is also on the same document
23 from which this COE name come. To me that
24 would be potentially redundant or
unnecessary.

00279:01
75. PAGE 280:01 TO 281:19 (RUNNING 00:02:09.300)

00280:01 Q. Is Exhibit-31 an email that you received
02 from Mr. McCafferty in July of 2000?

03 A. Yes.

04 Q. And this email concerns another
05 arrangement between Mack Trucks and Chicago Mack and
06 Indiana Mack, correct?

07 MR. HEEP: Objection to form of
08 the question.

09 THE WITNESS: Yes.

10 - - -

11 BY MR. MACK:

12 Q. And these are -- in this instance, the
13 dealers are being granted floorplan assistance; is
14 that right?

15 A. This is per our request to all dealers,

16 Chicago and Indi's response to buying this corporate
17 inventory pool of trucks that we were hoping the
18 dealers would take and not allow us to invoice them
19 for.

20 Q. Well, does this say anything about other
21 dealers, sir?

22 A. Yes. I guess it's yes to your question.

23 Q. Where does it say this was a program that
24 is offered to other dealers?

00281:01 A. I added that myself.

02 Q. Okay. It actually says per our
03 conversation with Kevin Flaherty on June 28, 20000,
04 doesn't it? Did I read that right.

05 A. Yes. Yes, it does.

06 Q. Now, at the bottom of the email there is a
07 reference to any future programs involving models
08 that we purchased under this agreement needs to have
09 the understanding that the discounting under any of
10 our previous agreements or new Mack programs,
11 whichever is greater, will apply to our inventory at
12 that time.

13 Now, what previous agreements
14 does that refer to?

15 MR. MACK: Objection to
16 foundation.

17 THE WITNESS: I believe that
18 would have referred to the previous
19 exhibit dealing with the stock order.

76. PAGE 281:22 TO 282:15 (RUNNING 00:00:56.500)

22 Q. Does Chicago Mack presently have any
23 trucks in its inventory that Mack is paying
24 floorplanning on?

00282:01 MR. HEEP: Does Chicago Mack
02 have any trucks currently in its inventory
03 that Mack is paying floorplanning?

04 MR. MACK: Yes.

05 THE WITNESS: We have had -- I
06 know we had programs, gener 1 programs
07 since then that I believe they have taken
08 advantage of that involved some extended
09 floorplan arrangement. Like Dogs Gone
10 Wild was -- there was an ordering program
11 feature that guaranteed extra floorplan
12 days. Summer Sizzle was a highway program
13 that had an ordering feature that allowed
14 extended dates. So I -- yes, I believe
15 they would have some of those truck.

77. PAGE 283:16 TO 285:08 (RUNNING 00:02:18.200)

16 Q. Is this an email you exchanged with Mr.
17 McCafferty in February 2001?

18 A. Correct.

19 Q. And this email relates to the pricing
20 matrix for Chicago, Indi, and R&H, right?

21 A. Yes, it does.

22 Q. And Mack had agreed that those dealers
23 would have a pricing matrix good through December 31
24 of 2001; is that right?

00284:01 A. That's what the letter says, correct.

02 Q. And you then reference the real world

03 matrix in the end of your email, right?
04 A. Yes, I do.
05 Q. Is that a reference to the pricing matrix
06 in effect for the rest of the chain, for the rest of
07 the dealer network?
08 A. Yes. What I meant here by matrix, that is
09 a name to the standard discount that has been used.
10 Q. And by real world you meant everyone else
11 that was a dealer other than these three, right?
12 MR. HEEP: Objection to form.
13 THE WITNESS: Yes. I believe,
14 as I said earlier, this was the only
15 dealer that came up and offered to fill
16 some factory line slots in return for some
17 guaranteed discounts and some programs.
18 So they would have been the only dealer at
19 the time -- dealers at the time who would
20 have had stock trucks with some type of a
21 guaranteed pricing, as you see on this
22 letter.
23 - - -

24 BY MR. MACK:

00285:01 Q. These dealers weren't have pricing under
02 the real world matrix. They were having pricing
03 under the other matrix that had been worked out with
04 them, right?

05 A. If we take the real world matrix to mean
06 just the standard discounting at the standard
07 discount at which stock trucks would normally be
08 invoiced for other dealers, yes.

78. PAGE 287:10 TO 288:08 (RUNNING 00:01:28.100)

10 Q. You agree with me that this is a different
11 percentage discount in Exhibit-32 than Exhibit-30?

12 MR. HEEP: Are the discounts in
13 32 different from the discounts in 30? Is
14 that the question?

15 MR. MACK: It's that simple of a
16 question.

17 THE WITNESS: That answer would
18 be no. RD, RB -- per Exhibit-32, RB, RD,
19 EN, CL, are Macungie trucks. And it said
20 17.5 percent in Exhibit-32. And it says
21 17.5 percent in Exhibit-30.
22 - - -

23 BY MR. MACK:

24 Q. So it's the same matrix?

00288:01 A. Yes.
02 Q. Is there another pricing matrix that you
03 believe was out there that I haven't shown you a
04 document for?

05 A. What do you mean by another matrix?
06 Q. A different level of discounts for these
07 dealers during this timeframe?
08 A. No.

79. PAGE 288:14 TO 290:16 (RUNNING 00:04:10.100)

14 Q. Is Exhibit-33 emails that you exchanged
15 with Mr. McCafferty?
16 A. Yes, it is.
17 Q. And now we're February 19 of 2001?

18 A. Correct.

19 Q. And in addition to requesting the pricing
20 discounts that we talked about previously, he is now
21 requesting rebates for the group of \$2,500 on CXs
22 and --

23 A. He is requesting the use of a Bulldog
24 Bucks program, yes.

00289:01 Q. And did you -- why you did say this is
02 about the best we can hope for?

03 A. Well, I believe this was that point in
04 time where I wasn't particularly thrilled on a
05 personal basis with the deal we had struck. And
06 therefore, knowing that we were going to have to
07 live with it based on the agreement that had been
08 made, I was just responding, exactly as I said, this
09 is about the best. And that was basically inferring
10 on a personal note on the agreement that had been
11 made here.

12 Q. Now, the rebates under the Bulldog Bucks
13 program on CX613s was \$2,500; is that right?

14 A. That I believe was the maximum amount of
15 Bulldog Bucks that any dealer could turn in on our a
16 truck they retail given certain conditions of the
17 program.

18 - - -

19 At this time Polzer-34 has been
20 marked for identification purposes.

21 - - -

22 BY MR. MACK:

23 Q. Exhibit-34. Is this an email from Mr.
24 McCafferty to you?

00290:01 A. Correct. March 12, 2001.

02 Q. So we're three or four weeks after
03 Exhibit-33, right?

04 A. Correct.

05 Q. And Mr. McCafferty says, I have discussed
06 discounts with group on CX613s and he is now
07 requesting a \$5,000 rebate on corporate transfers,
08 on dealer ordered units, and on 100 Anniversary
09 CX613s, right?

10 A. Yes.

11 Q. And did you approve that, sir?

12 A. I'm going to guess, yes, I did.

13 MR. HEEP: Same thi l. No one
14 wants you to guess.

15 THE WITNESS: Okay. Yes, I
16 believe we did.

80. PAGE 293:09 TO 294:16 (RUNNING 00:02:10.900)

09 Q. Is this an email you exchange with
10 Mr. McCafferty, sir?

11 A. Yes, it is.

12 Q. February 2002?

13 A. Correct.

14 Q. And in the middle email which you sent to
15 Mr. McCafferty you say that Central Indiana Mack is
16 the same dealer group that you feel I have a bur up
17 my you-know-what.

18 A. I think that is where I was reading also.

19 Q. Did you have a bur up your you-know-what
20 about Central Indiana Mack?

21 A. I did not feel I did. John McCafferty
22 thought I did.
23 Q. And Mr. McCafferty felt you did because
24 you were challenging the across the board nature of
00294:01 the discount and rebates that were being given to
02 Central Indiana Mack; is that right?
03 A. Correct.
04 Q. And why were you challenging that, sir?
05 A. Obviously, I thought that was a little
06 much.
07 Q. A little too much?
08 A. I thought it would be too much.
09 Q. Okay. And you felt, did you not, that Mr.
10 McCafferty had agreed to highly discounted dealer
11 plus pricing on the Macungie units?
12 A. I am sorry. Repeat the first part of
13 that.
14 Q. Yes. Do you see the phrase highly
15 discounted dealer plus pricing?
16 A. Correct.

81. PAGE 300:03 TO 302:18 (RUNNING 00:03:32.800)

03 Q. This is an email exchange between you and
04 Mr. McCafferty?
05 A. Correct.
06 Q. And now there is disagreement between you
07 two over how many of those units at Chicago Mack and
08 Chicago Mack were actually free floorplan units?
09 A. That is -- yes, that is a fair assumption.
10 Q. And you stated to Mr. McCafferty, you
11 absolutely have to be smoking dope to think to have
12 this many free floorplan units, no F-ing way?
13 A. Correct.
14 Q. And then you went on to say, the more I'm
15 looking into this based on your reply below the more
16 I believe were getting raked over the coals?
17 A. That's what I wrote.
18 Q. And you concluded by saying you were going
19 to instruct sales billing to honor the remaining six
20 units even though five of them are bogus, right?
21 A. That's what I wrote.
22 Q. Why did you believe that five of the units
23 were bogus?
24 A. I believe what was -- I know what was
00301:01 transpiring here is in addition to all the corporate
02 inventory trucks that they bought, they were
03 entitled under the two-for-one program to order two
04 times that many.
05 I don't know the exact number,
06 but I believe they bought at least 2 to 300
07 corporate inventory units which entitled them to
08 anywhere from 300 to 600 two-for-one future orders
09 that would have come at free floorplan.
10 At some point in time there was
11 a pressure from above or whatever to get all these
12 units off of the free floorplan. And part of that
13 was trying to get a handle on how many units Chicago
14 Mack really had eligible under this program. And
15 that is what we were trying to do.
16 And what had happened here is I
17 believe I asked John McCafferty send me a list of

18 what you think they still have to bill that would be
19 part of this program? I believe I got -- actually
20 got a list from the Chicago Mack, Chicago dealer
21 sales manager, Dennis Bozwinkle, and he had a lot of
22 trucks on there that I started looking at all of
23 them to see if they matched up to kind of my
24 understanding of what they were. And there were
00302:01 discrepancies.

02 Q. And that is what led you to conclude that
03 five of the units listed were bogus?

04 A. I looked at every single truck that he
05 listed that he thought to be free floorplan, and I
06 made a -- I researched each of them and made a
07 determination that they could not possibly have been
08 part of the two-for-one program.

09 Q. And you concluded, at that time, that Mack
10 was getting raked over the coals by this dealer; is
11 that right?

12 A. At that time, I thought they were trying
13 to get more units than they were entitled to placed
14 under the free floorplan program.

15 Q. Well, raked over the coals was the word
16 you used. I didn't make that up, right?

17 A. I used the words raked over the coals,
18 correct.

82. PAGE 315:22 TO 316:21 (RUNNING 00:01:28.200)

22 Q. Do you recall any special sales incentive
23 programs being set up for Mr. Nuss's dealership?

24 A. A special program, I don't recall. But as
00316:01 a general rule we will always help dealers with
02 their existing inventory to help them get rid of
03 them, especially if we know they will be within
04 their AOR. We believe we have done that
05 consistently for any dealer who is asked.

06 Q. But one of the stipulations is that the
07 inventory must be sold in the dealer's AOR?

08 A. Yes.

09 Q. That is a common stipulation for one of
10 these special programs?

11 A. I would say if we would entertain a
12 special program, yes, we would hope.

13 Q. And why is that?

14 A. I -- we just believe -- I believe speaking
15 for Mack, we believe that we want dealers to be
16 successful. And the best scenario is for dealers to
17 be successful selling to customers within their AOR.

18 Q. And you don't want dealers to undercut
19 other dealers outside of their AOR, right?

20 A. If we had our preference. Obviously we're
21 not crazy about that.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 03:07:25.233)